

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ROGER L. HANDY Claimant)	
VS.)	
NURSEFINDERS,)	Docket No. 195,722
)	D/A: September 6, 1994
AND)	
)	and
INTERIM HEALTH CARE SERVICES,)	Docket No. 205,227
Respondents)	D/A: September 1, 1995
)	
AND)	
)	and
TRAVELERS INSURANCE COMPANY)	Docket No. 216,512
)	D/A: June 12, 1996
AND)	
)	
INSURANCE COMPANY OF STATE OF)	
PENNSYLVANIA)	
Insurance Carriers)	

ORDER

Respondent, Nursefinders, and its insurance carrier, Travelers Insurance Company, appeals from the preliminary hearing Order of Administrative Law Judge Julie A. N. Sample dated May 11, 1998, wherein the Administrative Law Judge granted claimant medical treatment through Dr. Larry F. Frevert or his referrals.

ISSUES

Respondent raises the following issue for Appeals Board consideration:

The specific issue the Respondent and Insurance Carrier wish to address is whether the Administrative Law Judge exceeded her jurisdiction by ordering the Respondent to provide authorized treatment by a single physician proposed by the Claimant instead of following the K.S.A.

44-510(c)(1) change of physician remedy. Questions of jurisdiction in preliminary hearings may be appealed under K.S.A. 44-551.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

Respondent contends the Administrative Law Judge exceeded her jurisdiction pursuant to K.S.A. 1995 Supp. 44-551 by granting claimant a fourth rotator cuff surgery to his shoulder. It is not disputed that claimant suffered accidental injury arising out of and in the course of his employment. Dr. Frevert, one of claimant's treating physicians, recommended a fourth rotator cuff surgery to claimant's left shoulder. Respondent objected to the Administrative Law Judge's appointment of Dr. Frevert as the authorized treating physician contending K.S.A. 44-510(c)(1) required that a list of three doctors be provided by respondent from which claimant could select a new authorized doctor. Respondent contends the Administrative Law Judge's failure to follow K.S.A. 44-510(c)(1) exceeds her jurisdiction.

K.S.A. 44-551(b)(2) provides that the Appeals Board shall not review a pending preliminary hearing order entered by an administrative law judge unless it is alleged that the administrative law judge exceeded his or her jurisdiction in granting or denying the relief requested. Specific issues considered jurisdictional are listed in K.S.A. 1997 Supp. 44-534a(a)(2) as follows:

1. Whether the employee suffered an accidental injury.
2. Whether the injury arose out of and in the course of the employee's employment.
3. Whether notice was given or claim timely made, or
4. Whether certain defenses apply.

K.S.A. 1997 Supp. 44-534a(a)(2) grants upon an administrative law judge the jurisdiction to decide issues dealing with the claimant's entitlement to medical compensation and temporary total disability compensation pending the conclusion of a full hearing on the claim. Right or wrong, the decision to provide medical care at a preliminary hearing is within the jurisdiction of an administrative law judge and does not constitute an issue which is appealable from a preliminary hearing to the Appeals Board.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Julie A. N. Sample dated May 11, 1998, remains in full force and in effect and the appeal by the respondent and is dismissed.

IT IS SO ORDERED.

Dated this ____ day of July 1998.

BOARD MEMBER

c: Bertica Dominguez-Calbi, Kansas City, MO
Kenneth J. Hursh, Overland Park, KS
Michael T. Holloran, Kansas City, MO
Julie A. N. Sample, Administrative Law Judge
Philip S. Harness, Director